

## **REMARKS**

Claims 1-7 and 9-15 remain pending in the present application. Claims 1-2, 6, 9, 12, 13, and 15 have been amended. Basis for the amendments can be found throughout the specification, drawings and claims as originally filed.

The undersigned attorney would like to thank Examiner Kyle for the courtesies extended to him during the personal interview on March 8, 2006. At the interview, no agreement was reached.

## **REJECTION UNDER 35 U.S.C. §102**

The Examiner has rejected Claims 2-5 under 35 U.S.C. §102(e) as being anticipated by DeLuca et al. (U.S. Patent No. 6,591,456).

Claim 2 has been amended to further define the gripping portion and the power tool. Also, it defines that the clamping member includes a fastening mechanism to secure the clamping member with the housing to cover a portion of the housing. The clamping member becomes the housing adjacent the at least one flexible sheet.

The DeLuca et al. reference cited by the Examiner fails to disclose or suggest Claim 2. DeLuca et al. illustrates a cushioning device for hand held implement. As illustrated in Fig. 10, the cushioning member is connected with a second portion to form a housing. DeLuca et al. neither discloses nor suggests the clamping member on top of the housing and securing it with the housing so that the clamping member becomes the housing adjacent the flexible member. Accordingly, DeLuca et al. fails to anticipate Applicants' invention. Thus, Applicants believe Claim 2, as well as Claims 3-5 which depend from Claim 2, to be patentably distinct over the art cited by the Examiner.

### **REJECTION UNDER 35 U.S.C. §103(a)**

The Examiner has rejected Claims 1, 6, 7 and 9-15 under 35 U.S.C. §103(a), alleging them to be unpatentable over Wadge (U.S. Patent No. 6,206,107) in view of DeLuca et al (U.S. Patent No. 6,591,456).

Independent Claim 1 has been amended to further define the clamping member to include a fastening mechanism to secure the clamping member with the housing to cover a portion of the housing. The clamping member becomes the housing adjacent the at least one flexible member.

The art relied on by the Examiner, specifically Wadge and DeLuca et al., fail to disclose or suggest Applicants' invention. As was pointed out at the interview, the Wadge reference fails to disclose or suggest any type of cushioning member. Thus, Wadge neither discloses nor suggests the desirability of a cushioning member. DeLuca et al., relied on by the Examiner, illustrates a cushioning device for a hand-held implement. As illustrated in Fig. 10, the cushioning member is connected to another housing portion to form the entire housing. DeLuca et al. neither discloses nor suggest positioning a clamping member on top of the housing and securing it with the housing so that the clamping member becomes the housing adjacent the flexible member. Accordingly, the Wadge and DeLuca et al. fail to disclose or suggest Applicants' invention. Accordingly, Applicants believe Claim 1 to be patentably distinct over the art cited by the Examiner.

Claim 6 has been amended. Claim 6 further defines the handle which comprises a gripping portion and a chamber extending outward from the gripping portion. The gripping portion surrounds the chamber and secures the chamber in the gripping

portion. The chamber is disposed relative to the gripping portion and the chamber is positioned on the gripping portion to enable parts of the user's hand, such as fingers, to contact the gripping portion while other parts of the hand, such as the palm or heel, contact the chamber to provide a dampening function for the user. Thus, both the gripping portion and the chamber portion are simultaneously gripped during operation of the tool.

The combination of Wadge and DeLuca et al. fail to disclose or suggest such a feature. First, Wadge fails to disclose or suggest any type of dampening member. The Examiner relies on hindsight reconstruction to combine DeLuca et al. with the Wadge reference. When the Examiner does so, DeLuca et al. illustrates gripping surface surrounding the entire handle portion. With the closely positioned cushioning portions, best illustrated in Fig. 13 of the DeLuca et al. reference, the reference only enables gripping of the cushioning portion. Thus, Applicants believe Claim 6 to be patentably distinguishable over the art cited by the Examiner. Likewise, Claim 7, which depends from Claim 6, is patentably distinct over the art cited by the Examiner.

Independent Claim 9 has been amended to be patterned after Claim 1. Accordingly, the above remarks with respect to Claim 1 equally apply to Claim 9. Accordingly, Applicants believe Claim 9 to be patentably distinct over the art cited by the Examiner. Likewise, Claims 10 and 11 which depend from Claim 9 are patentably distinct over the art cited by the Examiner.

Claim 12 has been amended. Claim 12 further defines the chamber resting upon a portion of the housing. The chamber protrudes from an upper surface of the gripping

portion so that the gripping portion retains a chamber on the housing and covers the housing portion adjacent the chamber.

As mentioned above, the combination of Wadge and DeLuca et al. fails to disclose or suggest such a feature. DeLuca et al. fails to disclose or suggest a chamber resting on a housing. Further DeLuca et al. fails to disclose or suggest the chamber covering a portion of the housing. Thus, the combination fails to disclose or suggest Applicants' invention. Accordingly, Applicants believe Claim 12 to be patentably distinct over the art cited by the Examiner.

Claim 13 has been amended to be patterned after Claim 12. Accordingly, the above remarks with respect to Claim 12 equally apply to Claim 13. Thus, Applicants believe Claim 13 and dependent Claim 14 to be patentably distinct over the art cited by the Examiner.

Claim 15 has been amended to be patterned after Claim 6. Accordingly, the above remarks with respect to Claim 6 equally apply to Claim 15. Accordingly, Applicants believe Claim 15 to be patentably distinct over the art cited by the Examiner.

In light of the above amendments and remarks, Applicants submit that all pending claims are in condition for allowance. Accordingly, Applicants respectfully request the Examiner to pass the case to issue at his earliest possible convenience.

Should the Examiner have any questions regarding the present application, he should not hesitate to contact the undersigned at (248) 641-1600.

Respectfully submitted,

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By: 

W. R. Duke Taylor  
Reg. No. 31,306

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

WRDT/lkj